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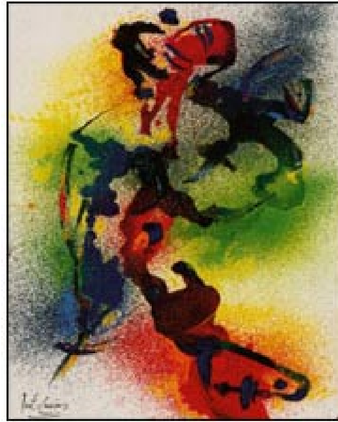

State-Corporate Relationships in an Era of Shifting Regime: The Case of Corporate Law Reform in Israel

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Abstract

Different aspects of the relationship between state and economy have traditionally been examined, yet corporate governance and specifically corporate law have received less attention. This article focuses on the legislation of the new corporate law in Israel at the end of the 1990s, which took place during regime transformation from an interventionist state to a regulatory state. The article makes specific reference to three disputes: the piercing of the corporate veil, the separation of the position of chairman of the board and chief executive officer, and the obligation of private firms to disclose financial reports. This article suggests that despite the transformation of the regime, state actors have continuously been involved via corporate law in the governance of corporations and their relationship with the environment. However, corporate law enables corporations to constrain state power and the state's influence on property rights.

Introduction

After World War II, the interventionist state was the dominant pattern in the political-economic regime of many countries. The interventionist state (both the corporatist state in Western Europe and the developmental state in East Asia) used a variety of measures to intervene directly and indirectly in the economy, as a planner, a direct producer and consumer of goods and services, and as an employer.

Since the 1970s the interventionist state has been declining, indicating a regime shift. As a direct consequence of the decline of the interventionist state, a new political-economic regime, the regulatory state, began to emerge in the late 1970s across the advanced capitalist world, which includes privatization, liberalization, welfare reform, deregulation and re-regulation. In the regulatory state the use of laws and regulations to structure markets and firms is becoming an increasingly important mode of state involvement in advanced industrial economics (Cioffi 2000:575). In regime shifts, older institutional forms decline, but this should not be taken to imply that new forms come to dominate instantly. Rather, it is likely that both institutional arrangements exist alongside each other (Jayasuriya 2001; Pempel 1998).

Traditionally, different aspects of the relationship between state and economy have been examined, yet corporate governance and specifically corporate law have received less attention (Cioffi 2000; O'Sullivan 2000). This article concentrates on the legislation of the new corporate law in Israel at the end of the 1990s, which brought dramatic changes to Israeli corporate governance. This examination of the new Israeli corporate law provides a unique opportunity to explore the relationship between state and corporations in an era of reform. Usually, changes in corporate law are incremental, as opposed to the adoption of new and fully cohesive law as occurred in the Israeli case. Such extensive reform facilitates the analysis of the intense political conflicts of interest between and among state actors and non-state organizations.

This article specifically concentrates on three separate disputes during the legislation of the new Israeli corporate law. The disputes are unrelated and were chosen on the basis of two criteria: first, each relates to a different type of corporation, and second, the disputes were characterized by deep and intense conflict among the participants. While most corporations are privately owned, nearly all academic discussion on corporate law deals with public corporations, which constitute a

marginal percentage of corporations and yet hold a pivotal position in the economy. This paper rejects the avoidance of private corporations and deals with both private and public corporations.

A number of rules in company law relate to all types of corporations, and this paper uses one example of this, namely piercing the corporate veil. The selection of this dispute originates from the unique nature of Israeli legislation that institutionalized this doctrine in corporate law. The other two disputes discussed in paper were chosen since they were considered by the participants in the legislative process as the ones that attract the most intensive public opposition (Zandberg 1999). They are the separation of the position of the chairman of the board of directors and Chief Executive Officer (CEO), which focuses on publicly traded firms, and the duty to disclose financial reports, that concentrates on private firms. The three disputes selected enable the study of the emergence of new institutional arrangements alongside the persistence of old arrangements.

This article suggests that two contradicting processes take place simultaneously in the relationship between state and corporations. On the one hand, through corporate law, state actors are continuously involved in the ongoing activities of corporations despite the process of liberalization, including involvement in how they govern themselves. Such involvement to a large extent takes place in publicly traded firms. On the other hand, corporate law enables corporations to constrain the state's power and its influence on property rights, which occurs via private firms.

This article begins with the introduction of the theoretical frameworks relating to the political-economic regime transformation, the changing nature of politics and the relationship between state and corporations. The second part briefly introduces the transformation of the Israeli political-economic regime. The third section of this paper presents the evolution of the new Israeli corporate law, its underlying theoretical perspective, and the differences between the new law and the Companies Ordinance, followed by an analysis of the three disputes. Finally, the conclusion deals with the general question: what conditions facilitate the simultaneous states of change and continuity in state-corporations relations?

The empirical foundation of this article is based on primary as well as secondary sources, interviews and written material. Most of the material is documentary, including all relevant material published by state agencies, such as reports, protocols and correspondence between state and non-state organizations.[1] Other written material includes academic books and articles by legal experts concerning the law, as well as articles from Israeli daily newspapers. In addition, the study is based on interviews with leading state officials who played an important role in designing the law.

Corporate Law and State-Corporations Relations

After World War II the interventionist state was the dominant regime in many countries, but since the 1970s a regime shift has taken place. A regime consists of three key elements: a set of dominant socio-economic coalitions, a set of institutional arrangements and a stable set of policy strategies (Jayasuriya 2001; Pempel 1998). All three elements are wide-ranging and the specific character of the regime is contingent on the national setting. Pempel (1998: 113) notes that although many regimes are highly unstable and in a constant state of flux, postwar industrialized democracies have been characterized by institutional stability. Periodically, comprehensive shifts occur in even the most stable regimes, and such transformations are marked by new coalitional arrangements, altered institutional configurations or shifts in the underlying policy profile (Pempel 1998).

One direct consequence of the decline of the interventionist state was the emergence of the regulatory state. Moran (2001: 20), in discussing the rise of regulatory state in Britain, suggests that several components make up such a regime. First, state involvement in the economy is aimed at correcting particular market failures and is not aimed at managing the entire economy, as was the case with the interventionist state. Second, in the new regime new forms of state control emerge, namely a loosely coordinated set of public agencies marked by their own distinct cultures and modes of operation. Third, instead of public ownership, a network of regulated privatized industries emerges. Fourth, vast new areas of social and economic life are colonized by legal and regulatory agencies. Finally, the patterns of regulation of different institutions – professions, financial markets and universities – are transformed: instead of self-regulation, statutory regulation is usually administered by specialized agencies.

Regime shifts are prolonged and may involve an extended transition period whereby the old regime is fading but the new regime is struggling to find its coalitional and institutional anchors. While in the late 1990s in Britain and United States a new regime was clearly established - the neo-

liberal state - other capitalist societies such as Italy, Sweden, Japan, South Korea and Israel, are currently still stumbling through an uncertain transition toward new patterns of stability (O'Riain 2000; Pempel 1998:210). Cioffi (2000: 587) for example, suggests that in both France and Japan, which were traditionally considered as statist, the state remains a powerful actor in the economy despite various reforms in financial market laws and regulations, and the legacy of statist institutional arrangements has had a profound influence on subsequent reforms. Vogel (1996:3-4) argues that in advanced economics of United States, Western Europe and Japan there are stronger markets but not weaker governments.

Regime transformation leads to changes in the very character of politics; namely in the patterns of state involvement in the economy, in the relationships between and among state and non-state actors, in the balance of power among state organizations, and in the centrality of different social groups (Jayasuriya 2001; Majone 1997; Moran 2001; Vogel 1996). In the new regime, states themselves, even more than private interest groups, have driven the regulatory reform process in order to generate revenue, to facilitate the servicing of debt, or to make regulation itself more effective (Vogel 1996; see also Weiss 1998). Moreover, as new markets become integrated on a large scale, there will be a demand for more, not less, government (Fligstein 1998).

The shift from the interventionist to regulatory state also entails the emergence of new actors in the policy arena, or at least a significant re-allocation of power among old actors. Majone (1997: 155-157) indicates that in the regulatory state the judiciary, experts, regulators and single issue movements become important actors. The judiciary's position changes from that of a relatively neutral referee to an active player, and in fact, the involvement of the courts in administration and policy-making is perhaps the most important consequence of the growth of the regulatory state. Sciulli (1999:1) suggested that in the USA the corporate judiciary bears ultimate responsibility for limiting corporate power. The role of judges is equally crucial in relation to market regulation. In the United States, the courts have largely shaped the decision-making process of regulatory agencies. In addition, in Europe the growth of regulation is giving the courts a new role in policy making (Majone 1997).

Experts and regulators are another important group of actors in the regulatory state. Regulation depends heavily on scientific, engineering and economic knowledge. Partly because of the dependence on expertise, regulators enjoy greater power and discretion than other administrators. Just as the regulatory agencies focus on a single task, so the new interest groups, which thrive in the regulatory state, are concerned with single issues, such as the environment and civil rights (Majone 1997: 155-157).

The use of laws and regulations to structure markets and firms is becoming an increasingly important mode of state involvement in the economy (Cioffi 2000). Corporate law, which is an important component of corporate governance, is a crucial mechanism through which state organizations structure the economy. In addition to corporate law there are two other legal modes of state involvement in the corporation, i.e. court adjudication and administrative and enforcement state agencies, such as anti-trust bodies or securities authorities. The mandate for involvement of both courts and state agencies in corporations is partly derived from corporate law. However, corporate law is simultaneously an instrument for constraining state power in the economy and enabling corporations to limit the state's power and its influence on property rights. As Sciulli (1999: 5) notes, "After all their very presence (of corporations) in civil society means that the state does not monopolize collective power". While the corporation is the creation of the state, it is also protected from state intervention and the result is that corporate law constrains the state's power and its influence on property rights.

Corporations are the creation of the law and therefore have no independent existence apart from politics, therefore political conflict invariably shapes what corporations are allowed and not allowed to do (Carruthers and Babb 2000: 93). The dual trajectories of corporate law - enabling the state to shape the economy and constraining state power - are mediated politically through coalitions of state and non-state organizations. The outcome of legislation depends on political processes and especially on the power relations among the actors in the coalitions involved. The composition of coalitions as well as their points of view and their arguments is a matter of empirical investigation, an issue which will be explored later. First, the transformation of the Israel political-economic regime will be presented along with the historical and theoretical context of legislation.

The Israeli Political-Economic Context

The main actors in the political-economic structure of Israel are state organizations, big business corporations (mainly business groups) and various interest groups. The most important actor in the Israeli political economy is the state, which until the mid 1980s was a developmental state that used different mechanisms for developing the economy centrally (Levi-Faur 1998; O'Riain 2000).

Since the mid 1980s the political-economic regime has been undergoing a process of change and there are numerous indicators of liberalization: the reduction of state intervention, the liberalization of capital markets and a significant opening of the economy to the world. The new neo-liberal economic and legal order, which emphasizes a more individualistic view with a free market orientation and autonomy of the economic sphere from state intervention, was imported by academics and professionals and was adopted by state elites - elected politicians and nominated bureaucrats. The reform in corporate law is part of the transformation of the political-economic-legal regime. However, even after the revolutionary transformation, state actors are still pivotal players within this regime (Levi-Faur 2000; Maman 1997; Shafir and Peled 2000; Shalev 1999).

The Evolution of the New Corporate Law

Since the establishment of the state of Israel, legislation of corporate law has been viewed as part of the creation of a national legal system detached from English common law. From 1949 on, several committees and law professors were asked to propose a reform in the corporation law, though none of their endeavors bore fruit. The failure of the past efforts are partly result of the way past recommendations were organized and submitted: they were phrased as general principles for legislation rather than as fully cohesive bills (Gross 1999:4). In addition, to accomplish a reform there must be a coalition of state and non-state actors that hold alternative points of view and are obliged to change the status quo. This coalition did not emerge in the past. Finally, promoting reform depends on windows of opportunity which were closed during the period of the interventionist state and were opened with the process of the decline of the interventionist state and the emergence of the regulatory state (Cortell and Peterson 1999).

In the summer of 1982, the Minister of Justice asked Uriel Procaccia, a professor of corporate law at the Hebrew University of Jerusalem, to prepare and redraft a new Corporate Code for the State of Israel. The new Corporate Code was meant to replace the current Companies Ordinance, which was enacted in 1929 by the British Mandate and was an almost verbatim copy of the British Companies Act of the same year. With the establishment of the State of Israel in 1948, the new state adopted most of the British Mandatory legal framework, including the Companies Ordinance.

Professor Procaccia’s proposal was based on the theoretical perspective of ‘Law and Economics’, or the contractual theory, and was inspired by academic works of American colleagues (Procaccia 1996). The adoption of the American model results from a deep belief of Procaccia’s, as well as most legal and economic scholars, that such a model is closer to the market ideal than those of other countries.

The Law and Economics perspective is the application of microeconomic theory to legal rule formulation, which since the 1970s holds a hegemonic position in the debate over corporations and law (Sciulli 2001). According to this perspective, the firm is a nexus of contracts between actors (Eisenberg 1999). Like in neo-liberal ideology, the state is perceived as inefficient, and therefore the view of state actors - courts, state agencies and legislature – is that they should enforce the terms to which the participants explicitly agree and provide waivable default rules to govern everything else (Ramseyer 1998: 504). According to this perspective, corporate law should try to mimic the contracts that the parties would have negotiated had they been able to bargain at no cost, and therefore there is no place in an efficient law for mandatory rules but only for enabling acts, except if there are market failures (Branson 2001). According to this approach, “The job of regulators is to identify the problem areas most prone to the failure of markets, and to design remedies to fit the problem” (Procaccia 1996: 630). In addition to repairing market failures, the approach requires that the state provide rules that facilitate the parties and economize their costs (Daintitih 1998). Moreover, according to this perspective too many mandatory acts within corporate law may lead firms to simply incorporate elsewhere (Agmon and Lachman-Messer 1996; Gross 1999; Yadlin 1998).

In 1985, the Minister of Justice nominated a committee of experts chaired by a Supreme Court Judge, Professor Aharon Barak (the current President of the Supreme Court), to transform Procaccia’s proposal into a formal bill. Barak’s committee comprised seven members, all from the legal profession - specifically representatives of the Ministry of Justice, the legal sciences and prestigious corporate lawyers. Subsequently, the legal advisors of the Tel Aviv Stock Exchange

and the Israeli Banks Association were invited to join the committee. Barak's committee worked for almost ten years on the proposed bill and at the end of the process the outcome was submitted to the government. The Ministers' Committee for Legislation adopted the new proposed bill after adding several changes suggested by the Ministry of Justice. In October 1995 the government submitted the new corporate law to the Knesset (the Israeli Parliament), which approved it on first reading. The new proposed corporate law was then transferred to the Knesset legal committee, which established a sub-committee for the process of achieving final approval of the corporate law (second and third readings). The sub-committee discussed the proposed bill for more than three years, during which usually only one member of the Knesset - the chairman of the sub-committee - participated. During the 38 Knesset sub-committee meetings at that time, various other participants took part, mostly members of the legal profession. Among them were representatives of state agencies (the Deputy Attorney General of the Ministry of Justices for Economic Issues, the Securities Authority, the Bank of Israel and the Antitrust Authority); representatives of interest groups (the Association of Publicly Traded Companies, the Tel Aviv Stock Exchange, the Banks' Association, the Manufacturers' Association of Israel, the Federation of Israeli Chambers of Commerce and the Chamber of Internal Auditors); representatives of professional associations (the Israeli Institute of Certified Public Accountants and the Israeli Bar) and legal academics. In April 1999 the plenary Knesset approved the new corporate law, and the law was put into effect in February 2000.

The new law is totally different from the Companies Ordinance, essentially indicating a movement from the English to the American influence, and only a few major differences will be mentioned here (for a comprehensive discussion see Procaccia 1987; Procaccia 1995; Procaccia 1996). While the Companies Ordinance defines private companies and classifies the remainder as public, the new corporate law defines only the public company and the private company is defined as non-public company. The differences in categorization result from the underlying philosophy of the new law which determines that, "The stubborn problem in all corporate law is the Agency problem" (Procaccia 1987:639). This exists mainly in public companies as a result of the separation of ownership from control. Moreover, the new law, in contrast to the Companies Ordinance, sets the corporation up as a separate legal person, raises the possibility of piercing the corporate veil, enables the establishment of one-member company, draws a clear line between the board of directors and the management, grants the board supervision power, determines that the directors and officers owe duties of care and loyalty to the corporation, discusses in length issues of liquidation, mergers and corporate acquisitions, and finally, adopts the American tradition of proxy rules.

Modes of State Involvement in Corporations

The corporation is a micro economic institution of capitalism and as such it is a fundamental form of property in capitalist society. The corporation is a creation of the law, and exists only when charted by the state. All states, including the USA - which is considered a non-interventionist state with relatively small apparatus developed to regulate markets - define and enforce rights, entitlements and obligations of property (Roy 1997). The power of the state to shape corporations is manifested, for example, in the right of a corporation to own other corporations (Parker-Gwin and Roy 1996; Roy 1997).

The power of the state to shape corporations via corporate law relates both to the internal governance of corporations – how authority is distributed among owners, directors and managers – and to the environment in which corporations are embedded, including suppliers, customers, workers and the entire society, all of the latter being influenced by corporations' activities. State involvement in corporate governance results from both the influence of theoretical models held by the actors involved in the process of legislation as well as from institutional legacies, especially the tendency of courts and state bureaucracy to play a role in the economy.

State involvement will be discussed using two disputes which took place during the process of legislation of the new Israeli corporate law: piercing the corporate veil and the separation of the position of chairman of the board of directors and the CEO. The first dispute relates to all types of corporations and the second to publicly traded firms.

1. Piercing the Corporate Veil

Piercing the corporate veil is one of the major mechanisms through which state organizations, via the courts, are involved in the property rights of corporations and their owners. The company is a continuous legal entity distinct from its owners. The company is legally the owner of its assets, and the owners (individuals or other firms) only have the rights attached to their ownership of the share capital. The state enables owners to enjoy the right of limited liability; thus, the owners have nothing at risk other than the money that they have invested in purchasing their stock, so if the corporation is sued by creditors for debts or damages, the owners are immune. Only in rare and special cases do courts lift the veil of incorporation, which differentiates between the corporation and its owners and determines that the shareholders are personally liable for the obligations of corporation. Lifting the veil relates to both private and public corporations (Dine 2000: 37; Roy 1997: 158).

The new Israeli corporate law defines that lifting the veil relates to both rights and obligations of the corporation to its shareholders and vice versa. In addition, the new law determines that in rare and special cases the courts can pierce the corporate veil. Moreover, the law indicates a list of typical situations in which courts may implement this doctrine[2].

The new Israeli corporate law is exceptional, compared to other countries, in the institutionalization of the doctrine of piercing the veil within the law. In most cases, lifting the veil is a result of court adjudication (Miller 1998). Reform suggestions, for example in USA, Britain and Australia, did not recommend changing the marginality of this doctrine and as Matheson (2000: 150) suggested, "That the piercing doctrine is lost in a fog is generally recognized". The exceptionality of the Israeli case is reflected in the statement of Professor Procaccia, in his introduction of the proposed corporate law to the members of the Israeli Parliament: "The law does something that is not common in legislation of other countries, it explicitly determines rules for piercing the veil"[3]

The institutionalization of this doctrine in the new Israeli corporate law emerged from its designers' intention to place this doctrine not in a minor and secondary place but rather in a central position within the law. Such a tendency is part of a broader process in recent years in which Israeli courts have broadened the doctrine of lifting the veil in different contexts (Gross 1999; Haviv-Segal 1999).

The dispute on the doctrine of piercing the veil divided the epistemic community of the field of corporate law[4]. As a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge, epistemic communities play a crucial role in helping state actors to frame issues for collective debate, proposing specific policies and identifying salient points for negotiation (Haas 1992). The epistemic community formed a subgroup in the legal profession composed of academics, state officials and lawyers, all of whom are experts in corporate law.

The members of the winning coalition were legal academics[5] who held a leading position in the epistemic community, the Deputy Attorney General for Economic Issues (DAGEI)[6] team, the Banks' Association[7] and a faction of the Israeli Bar Association[8]. In addition, the chairman of the Knesset sub-committee, who was the only legislator to participate in the discussion, played a crucial role in supporting the arguments of the winning coalition. The losing coalition was comprised of several societal groups: the Association of Public Traded Companies (APTC)[9], the Manufacturers' Association of Israel (MAI)[10] and a faction of the Israeli Bar Association.

The winning and losing coalitions agreed that the doctrine of piercing the corporate veil should only be implemented in rare cases, and not as a routine activity. However, the two sides differed on several issues[11]. The first issue was the scope of the doctrine. The losing coalition argued that the new law is very broad and that it questions the basic notion of the firm as a separate legal entity. Moreover, the coalition demanded that in the case of lifting the veil, the court should be restricted to the shareholders alone and not to the directors or managers. The second issue that the contesting sides disagreed upon was the type of corporations the doctrine would apply to. Whereas the winning coalition claimed that the law should relate to all types of corporations, the losing side argued that piercing the veil of corporations should be restricted to private and not public firms. This argument was mainly promoted by the Association of Public Traded Companies, which noted that there are already too many mechanisms to monitor the behavior of public firms and there is no need to add more. The third issue that the groups did not agree upon was the form of the statute. The winning coalition recommended that a general statement be issued that the court is free to lift the corporate veil, supplemented by a list of typical situations in which courts could implement this doctrine. The losing coalition basically opposed the idea of lifting the veil. However, given the disposition of the epistemic community to support this doctrine, they preferred that at least the law should specify a closed and restricted list of causes for doing so. In fact, these non-state actors were

striving to restrict the power of the courts. In contrast, the winning coalition was interested in granting the courts as many options as possible. In short, the debate on lifting the corporate veil relates to the controversy regarding state involvement in corporations. While the losing coalition endeavored to reduce the power of state actors, in this case the courts, the winning coalition's attempt was to allow wide discretionary power to the courts[12].

The tendency to allow broad discretion to the courts results from the central position of the judges within the Israeli legal system. To a large extent Professor Barak, the current President of the Supreme Court and chairperson of the committee that designed the new law, moved to grant the courts and judges wider power, a result of judicial activism that directs the conduct of the Israeli judicial system. Judicial activism started in the early 1980s at the Supreme Court, and then spread to the rest of the system. This historical change from legal positivism to legal activism is the result of several factors. The first factor is generational change in the social composition of judges, especially in the Supreme Court. The new generation of judges was influenced by its American counterparts and was willing to participate in policy-making. The second factor was the presence of the 'politics of rights' that legitimized the intense involvement of courts in political issue. The third factor was the decline of political parties and governing coalitions. The final factor was the tendency of different social group to approach the court for assistance (Edelman 1995; Woods 2001).

The tendency of judges to monitor corporate power is not restricted to Israel. Sciulli (1999), for example, suggests that the US corporate judiciary also bear ultimate responsibility for limiting corporate power. Moreover, the involvement of judges in decision-making is not restricted to corporate law, but rather it is a comprehensive and global phenomenon which has been termed 'the judicialization of politics', whereby starting in the last quarter of the twentieth century judiciaries around the world dramatically expanded the power of the courts and made decisions on politically charted issues (Migdal 2001; Tate and Vallinder 1995).

The increasing involvement of judiciaries in decision-making related partly to the transformation of the regime. While in the interventionist state political actors and state bureaucrats, especially from the ministry of finance, were pivotal players, in the regulatory state, the judiciary, as stated earlier, is one of the institutions that gains extended power in policy making. As a state institution, the involvement of courts in decision-making changes the balance of power between different components of the state, and yet the involvement of the judiciary in the economy is part of the institutional legacy of state involvement in the economy. The differences are in the modes of involvement and in the basis of legitimizing the court's involvement in corporate issues.

2. The Separation of the Positions of the Chairman of the Board and the CEO

The controversy regarding the separation of the positions of Chairman of the board of directors and Chief Executive Officer (CEO) in public companies deals with the internal governance of corporations: how authority should be distributed internally among directors and senior managers (Ramseyer 1998). For economists and legal academics who study corporations, the essence of corporate law is the governance of corporations' internal affairs (Barney and Hesterly 1996), whereas from the point of view of political sociology or economic sociology, studying the internal relationships within corporations enables the investigation of levels of state involvement in the corporations.

There is no single, universal answer to the question of whether a CEO can also be a chairman of the board. In addition, there is a deep dispute within both the academic as well as business communities regarding the necessity of separating the positions. In Germany, the positions are separated as a result of the two-tiered principle. As a matter of law there are two boards: the Vorstand (the management board) and the Aufsichtsrat (the supervisory board) (Hopt 1997). In other countries, company law does not refer to the separation of position and there are differences in practice: in most of the largest corporations in the USA, the CEO also serves as the chairman of the board (Hamilton 2000). In contrast, in Britain, Belgium and Japan, the positions are separated in most of the largest companies (Kirkbride and Letza 2002; Vincke 1997). Regarding the need for reform, in Germany there is opposition to changing the system, since there is a genuine belief that components of German corporate governance are socially desirable and economically beneficial (Charkham 1994; Hopt 1997). In contrast, in USA, Britain, Canada and Greece recent reform proposals have focused on the necessity for separating the positions (Mertzanis 2001; Pinto 1998:346; Vincke 1997). Roe (1997:177) concluded that "the notion of separating the CEO's

position from chairman of the board or installing a 'lead' independent director has become popular to discuss and occasionally to implement" in the USA.

As in other countries, separating the position was one of the most intense controversies in the legislation of the new Israeli corporate law. While only the chairman participated in most of the articles discussed by the Knesset sub-committee, in discussions of this specific issue several Knesset members from different political parties took part, some of whom were recruited by interest groups to represent their interests. Moreover, while in most of the discussions most of the participants were corporate lawyers, in this specific dispute the interest groups were represented by owners and CEOs of large corporations. The deep-seated disagreement among participants, both state and non-state actors, prevented the attainment of a compromise in the sub-committee, which led to transferring the issue for decision-making of the Knesset legal committee's plenum. The final decision was a technical compromise. It determined that in public companies the chairman of the board will not serve as the CEO, and yet in special circumstances the chairman may serve as CEO for no more than three years, only with the approval of a special majority of shareholders[13].

The dispute on the separation of positions, similar to the controversy on the doctrine of piercing the veil, divided corporate law's epistemic community. However, the lines of division were different from those in the first dispute, and so was the composition of the contested coalitions. Originally, Professor Procaccia suggested that in every company with more than three directors, and not only in public firms, the chairman could not serve as CEO. The rationale was that it is unreasonable that the head of the executive body will also head the supervising body (Procaccia 1989: 250). However, Procaccia's proposal, which was based on the theory of the Law and Economics perspective, was that this rule should be an enabling act and not a mandatory rule, i.e. every company could decide that the chairman could serve as CEO.

During the Barak committee discussion, state actors pushed to change Professor Procaccia's enabling rule to cogent acts, i.e. in public firms the chairman of the board could not serve as CEO, and the rule of separation would be restricted only to public companies[14]. The demand of separating the position of chairman and the CEO was borrowed from both constitutional law and from the Government Companies Law (1975). The 'constitutionalist' believes that "corporate law had a role to play in allocating powers and responsibilities among various organs of a company (shareholders, directors and executives), deterring mismanagement and self dealing by those in control of a corporation, and protecting minority shareholders against the depredations of the majority, much as constitution performs in a democracy" (Branson 2001: 621). Thus, the rationale of the state actors - both the Supreme Court Judge Professor Aharon Barak, the head of the Barak committe, and the team from the Ministry of Justice - was that just as there are different branches of government, and checks and balances characterized their relationships, so there should be a separation of positions in corporations. This doctrine was first implemented in the legislation of state-owned enterprises and state representatives imported it to the new corporate law (Gross 1999:119-120; State of Israel 1995:52).

The insistence of state representatives on the separation of the positions of chairman of the board and CEO could be attributed to the historical legacy of state officials' involvement in the ongoing activity of the Israeli economy. Historical legacy is one of the ingredients of state capacity (Hall 1986; Smith, Solinger, and Topic 1999). Historically, state organizations have played a decisive role in the Israeli economy, and as both state-centered and new institutionalism perspectives emphasize, such patterns of involvement serve as a model, schema or script for behavior, and this institutional continuity has a significant effect on policy making processes (Clemens and Cook 1999; DiMaggio and Powell 1991; Hall 1986). The legacy of involvement led state actors to perceive themselves as the guardians of the public order against interest actors and as actors working on behalf of the social good.

The coalition opposing the involvement of the state in the internal governance of corporations was comprised of legal academics, mainly from the contractarian movement, as well as two interest groups: the Association of Public Traded Companies (APTC) and the Manufacturers' Association of Israel (MAI). During the discussion of the Knesset sub-committee and as soon as the law was put into effect, legal academics criticized the law and argued that the new Israeli corporate law is the most "interventionist" law that exists, at least in countries relied on English law, and that intervention was achieved through changing the enabling acts to mandatory rules (Haviv-Segal 1999; Yadlin 1998)[15].

Both the APTC and MAI raised the most opposition to the separation of chairman of the board and the CEO in public firms, and raised several issues. First, separating these positions disregards the reality of Israeli corporate governance, i.e. in more than 25 percent of the corporations traded on the Tel Aviv Stock Exchange (TASE) the chairman of the board serves as CEO. Second, the

duty of separate positions burdens firms with additional expenses, especially on new listed companies, which usually have low equity. Such state involvement increases expenses for listed public firms and may prevent private firms from going public. Such involvement endangers the organizational interests of the APTC, whose power and welfare depends on the number of firms listed on TASE. In addition, such state intervention may severely harm the development of the stock market, which is a crucial component of the capital market, whose development is an agreed goal among state and non-state actors. Third, both interest groups claim that while the separation of positions is justified in the political domain, it is unreasonable to adopt models of constitutional law in corporate law. Finally, separation of positions is not found either in English corporate law, or, more importantly, in American corporate law, which serves as the model for the new Israeli corporate law. Rather, it exists in Germany. Adopting the German model stands in contrast to the common objective of full harmonization of Israel's securities regulations with those of the USA[16].

To sum up, despite the regime shift from an interventionist to a regulatory state which is reflected in numerous indicators of liberalization in the Israeli economy, the cases of splitting the roles of chairman of the board and CEO as well as lifting the corporate veil suggest that state actors are still pivotal players. The involvement of the state in governance, welfare and behavior of corporations, which are the basic micro institutions of capitalism, takes different forms. However, involvement through corporate law enables shaping the rules of the economic game via the internal relationships within the corporation among the shareholders, directors and managers, and the relationships of the corporation with its environment, including suppliers, customers, workers and the entire society. Moreover, although the corporate law reform was heavily informed by law and economics theory, the legacy of state involvement still has a profound influence, and the new reform indicates the emergence of the judiciary as pivotal state players alongside the experts from the academia.

Patterns of Constraining State Power by Corporations

Just as the corporate law enables state actors to play a major role in the internal governance of the corporations and their relationship with their environment, it is also a mechanism to constrain the power of the state. This will be discussed using the dispute of whether private firms should disclose financial information to the public.

One of the most fundamental modes for constraining the power of the state is the construction of the public/private distinction, which has been used in legitimizing the corporation. This constructed distinction stands in contrast to the preamble boundaries between state and non-state organizations. Parker-Gwin and Roy (1996:118) suggest that with regard to the relationships between state and corporations, since the mid-nineteenth century the American "states constituted the boundaries between public and private that later generations would proclaim to be nature's endowment of modernity". There is a widespread belief that the line between public and private is natural and inevitable, and that corporations are private agents that embody the sacred realm of privacy, and thus corporations are free to do their own business without the involvement of state organizations. As regards private firms, which make up the majority of corporations, the common view is that it is unquestionable for them to be outside the jurisdiction of state intervention. In the case of publicly traded firms, which numerically constitute the minority of corporations and yet hold a pivotal position in the economy, there is a deep disagreement as to whether they are private agents or public actors (Horowitz 1982; Roy 1997; Wolfe 1993). Historically, private corporations, like all types of corporations, have not always been private institutions; rather, they were originally chartered by governments to accomplish public tasks (Roy 1997). Moreover, corporations themselves, with the support of liberal ideology, have chosen to adopt the private vision which defines them as a large collection of private actions lumped together (Wolfe 1993:1675).

An additional method for constraining the power of the state is the emergence of the theoretical perspective, contractualism, which acquired the hegemonic position in legal and economic sciences, and as such has dominated the debate over corporations and law since the 1970s. The contractarians play a decisive role in strengthening the private self-identity of the corporation. According to the hegemonic perspective, the intervention of the state in corporate governance via legislature and the courts could take place only on rare occasions, and such involvement is legitimized only as a means of redressing imperfections in the market to permit the market to function again (Dine 2000; Ogus 1998; Rowley 1998; Sciulli 2001). However, these theoretical perspectives are more than scientific frameworks used to analyze the formation, structure, processes and impact of corporations (Mercuro and Medema 1997); in fact, they are the latest version of a historical tradition emphasizing laissez-faire (Wolfe 1993: 1678).

The Duty of Private Firms to Disclose Financial Information

Information is a scarce resource and it is not distributed equally among all parties. As such, there is a problem of information asymmetry, a problem emphasized by neo-institutional economics, especially by transaction cost and agency theories (Barney and Hesterly 1996; Eggertsson 1998). One of the preconditions for the functioning of the markets is reliable information. The absence of accurate information presents enormous obstacles to markets (Carruthers and Babb 2000: 7). If markets cannot function efficiently without a continuous and reliable flow of information, there is market failure and, as suggested earlier, one of the functions of the law and of the regulators according to legal and economic theory is to correct market failures (Cheffins 1997; Procaccia 1987:595).

This line of thought guided both Procaccia's proposal and the Barak committee in suggesting that all corporations should provide the public with financial statements, e.g. balance sheets (the static situation) and profit and loss statements (the dynamic situation). In addition, they suggested that this article of law should be a mandatory rule, in order to protect third parties that do business with the corporation. Having financial statements on private firms, such as those that already exist for public firms, will provide third parties with a warning mechanism on the possibility of firms collapsing. Private firms make up most of the firms in the economy and the need for information about these corporations is essential (Procaccia 1989: 153-157).

The proposed law was a revolutionary transformation in Israeli corporate law, since for the first time private firms were obliged to disclose annual financial information to the public. Securities law obliges publicly traded companies to publish annually-audited financial statements and quarterly financial reports and to disclose transactions with interested parties. The innovation of the suggested law was the extension of disclosing financial information to private firms (Procaccia 1989: 153-157; State of Israel 1994:16,188; State of Israel 1995:59-60).

While it is accepted among scholars that public traded companies should disclose financial information, there is a deep controversy regarding private firms. For example, a committee for company law reform in South Africa published a proposal in 1989 involving the removal of most of the distinctions between private and public companies regarding the filing and disclosure of annual financial statements (Henning 2001). In contrast, in 1977 the Netherlands enacted a special law for private companies which exempted private companies in relation to disclosure requirements (Procaccia 1989: 156). Britain is excellent example of such continual and deep-seated disputes. After 1967 both public and private limited companies were subject to the same disclosure requirements in Britain (Farrar and Itanning 1998). The Companies Act of 1985 perpetuated the trend from 1967, and in addition to keeping and filing annual accounts, private companies were obliged to prepare an auditors' report, present it at the annual general meeting and deliver it to the Register (Gouldling 1996: 11). The Companies Act of 1989 performed a reversal by introducing a new doctrine: the elective resolutions that exempt private companies in relation to disclosure requirements. This reform is very comprehensive: first at the level of content, i.e. what information must be included in the annual accounts; second in relation to whether or not the accounts should be audited; third regarding disclosure to shareholders and fourth in relation to the obligation to publish their accounts by registering at Companies House (Farrar and Itanning 1998:493). According to Swinson (1990: 4), the 1989 reform was 'part of a general policy to simplify administrative requirements and as part of neo-liberalism ideology'.

The recommended law was supported by a coalition of leading members of the field of legal academics and state actors, and was opposed by a coalition made up of other members of legal academic and societal groups. The Manufacturers Association of Israel (MAI) and the Israeli Institute of Certified Public Accountants (IICPA)[17], along with the support of legal academics who served as their corporate lawyers, led the opposition to the article. The MAI organized the opposition to the proposed law by recruiting well-known businessmen who own large private firms and are among the most prominent contributors to the political parties in Israel. These firm owners presented the arguments of the MAI, and stated that one of the main competitive advantages of the private firm is its unexposed business information. The argument was that compelling private firms to disclose their financial information would expose their advantages and disadvantages to current and potential competitors, who could acquire capabilities at a low cost and would be able to imitate the strategy of the exposed firm and eventually severely damage the business of the exposed firm. Moreover, in contrast to the argument of the counter-coalition, the representatives of the MAI argued that the proposed law does not contribute to the protection of third parties that do business

with corporations since all major creditors – banks, suppliers and employees - are already protected either by business contracts or by other laws. Moreover, the representatives of the IICPA warned that forcing private firms to disclose financial information could lead entrepreneurs not to incorporate businesses in the form of corporations and partnerships. Such opposition is mainly a result of the certified public accountants' organizational interests, since they were anxious regarding the possibility of contraction in the numbers of firms that could lead to a decrease in their income and in their welfare[18].

The success of the societal groups was derived both from recruiting and from forming a coalition of members of the Israeli parliament who were convinced to oppose the suggestion of the state actors and legal academics. Success was also achieved by persuading the counter-coalition to retreat from its original suggestion. From the corporations' point of view, this issue is far more fundamental than the previous two disputes. Lifting the corporate veil relates to each firm only if the court decides that the owners exploited the separate entity, and separating the positions of chairman and CEO relates to an extremely marginal number of firms, viz. the public corporations. In contrast, forcing private firms to disclose financial information was perceived as endangering the interests of all private firms, and if the suggestion was approved it could lead to fundamental change in the economic landscape.

To convince the contesting side, the non-state winning coalition used the terminology of the Law and Economic perspective, specifically the widespread belief that the private sphere is distinct from the public and that the private sphere should be protected from the intervention of the state. In other words, the societal groups and legal academics who supported their demands and provide the academic legitimization held the view that a corporation is a private body which is entitled to the right of privacy, and as such there is no place for state regulation. Moreover, the success of the winning coalition to prevent private firms being obligated to disclose financial information resulted mainly from the underlying theoretical guidelines of Israeli corporate law. The designers of the corporate law, legal academics and state representatives, determine that "as everyone knows, the most important and stubborn problem in all corporate law is the Agency Problem" (Procaccia 1987: 639). As everyone knows, agency problems arise where there is a separation of ownership and management, which usually takes place in big business, whereas in most private firms there is no such separation. Thus, the designers of the new law deliberately decided that the new law will deal with problems of public firms and in addition they decided not to enact special laws for private firms, as in Germany. In other words, associating the corporate law with public corporations meant that the state decided to a large extent not to intervene in the internal affairs of private firms and their relationship with the environment[19]. Given this starting viewpoint, societal groups could easily convince the dominant coalition to retreat from their original suggestion to compel private firms to disclose financial information. The consequence is that while the corporation, perhaps more than any other economic entity, is a creature of the state, it is also protected from state involvement, and the result is that corporate law limits the state power and its influence on property rights.

Conclusion

The prolonged process of legislation of the new corporate law in Israel took place during a period of regime shifts from the interventionist state to regulatory state. This case study facilitates the identification of two contradicting processes in the relationship between state and corporations, which are micro-economic institutions of capitalism. On the one hand, despite the process of liberalization and the emergence of the regulatory state, state actors are continuously involved both in the internal governance of corporations and the firm's relationship with the environment via corporate law. To a large extent, such involvement is bound to public corporations. In other words, the corporate law reform was a state project; state actors played a crucial role in the initiative to reform the law and in molding different components of it throughout the process of legislation. The continuous involvement of the state in the economy through laws and regulations is supported by different case studies in a variety of contexts (Boyer and Hollingsworth 1997; Levi-Faur 2000; O'Riain 2000; Vogel 1996; Weiss 1998). The continual involvement of the state in corporate governance was illustrated by the ban imposed on the chairman of the board of public firms from serving as the CEO at the same time. The persistence of state officials to split the positions results from the historical intervention legacies of the state in the economy, which led state officials to perceive themselves as the guardians of the public order against interest actors and as actors working on behalf of the social good.

On the other hand, the new reform was inspired by the American neo-liberal model and was heavily based on the 'Law and Economics' perspective, which holds the view that essentially there is no place for state involvement in corporate governance, except for correcting particular market failures. Moreover, the proponents of this view are of the opinion that there are clear boundaries between the private and public domains and they are interested in expanding the private domain and reducing the involvement of the state in the economy to a minimum. A major result of the neo-liberal reform led to the creation of social domains that are not constrained or regulated by the state. This is most typical in legislation relating to private corporations, and the outcome is that the corporate law enables corporations to constrain the state's power and its influence on property rights.

The conclusion of this paper deals with a fundamental question: what conditions facilitate the dual contradictory processes occurring simultaneous in state-corporations relations? The paper outlines several conditions under which institutional change will take place. The first enabling condition is the emergence of alternative political-ideology. The continuous crisis of western capitalism since the early 1970s led to the emergence of the neo-liberal ideology which demands a change in the mode of state intervention in the economy. The 'Law and Economics' perspective, which is mainly an American academic version in the legal science of the neo-liberal ideology, served as the theoretical guideline for the corporate law reform.

The second enabling condition that opens windows of opportunity is international or/and domestic events that trigger change (Cortell and Peterson 1999). The new corporate law in Israel was designed during a deep and ongoing political-economic crisis which started following the October 1973 war, and it was affected by both international and domestics events. As a result of the continuous crisis, various changes took place in both the political and economic spheres, including the decline of political parties, a decrease in capabilities of state administration, especially in the Ministry of Finance, and the decline of the interventionist state and the emergence of regulatory state.

The third enabling condition is the emergence of social actors that take advantage of the opening of windows of opportunity to advance their interests and ideological standpoints. One of the most dramatic changes in the regime transformation is the emergence of the judiciary as a pivotal player, and this is a global phenomenon. The judiciary is one of several state actors, and yet its institutional logic that guides its action is different from other state agencies. According to the current dominant view of the Israeli Supreme Court judges, the court is a suitable and preferred institution to resolve any disputes in the society, to play an active role in policy makings and to lead social reform by judge-made laws (Barzilai 1999; Edelman 1995). The strengthening power of the judiciary is eminent in light of the awakening power of the political parties and state administration. In the corporate law reform, the strengthening of judicial power has been reflected in the case of lifting the corporate veil, in which the court position as monitoring corporate behavior and power was institutionalized. The Israeli case is exceptional, since lifting the veil is not the result of court adjudication as in other countries, but rather this doctrine was institutionalized within the corporate law. In sum, lifting the corporate veil enables the continual intervention of the state in corporate governance of corporation of different types and sizes.

Moreover, the transformation of the regime opens additional windows of opportunity for the greater involvement of epistemic community in crystallizing policy reforms. The decisive position of epistemic communities in leading policy reforms in different areas is well documented (Haas 1992). To a large extent, the outcome of the corporate law reform in Israel was the result of the controversies, conflicts and collaboration among the networks of legal experts in the fields of corporate law. A leading position in the epistemic community is held by prominent and prestigious legal academics who imported the 'Law and Economics' perspective and adjusted it to suit the Israeli local institutional conditions (Maman 2002).

However, policy reforms are not only the result of the influence of the epistemic community and the dominant role held by legal academics and state officials; they are also a product of political processes of emerging coalitions between state and non-state actors. The new corporate law was a result of political conflicts between mixed coalitions of state and societal actors. In each of the disputes discussed in this paper, the composition of the coalitions was not fixed and stable, and yet state actors hold pivotal positions in forming the coalitions and as central agents of institutional change, as discovered in previous studies (Cortell and Peterson 1999; Migdal 2001). The only two actors who in each dispute were on contesting sides were the representatives of the Ministry of Justice and the Manufacturers' Association, and even these two actors formed an alliance in other disputes not discussed in the paper. The other participants in the cases discussed supported the position held by state actors in some of the disputes and opposed the position in

others, and in still others did not take a stand. This was also true in the case of legal academics, who in the dispute of lifting the veil were on the same side of state actors while in the two other were divided among themselves. Moreover, the coalition led by state actors did not win in all the disputes and this was the case only in two of the three disputes discussed in the paper.

The triumph of the non-state actors in preventing the obligation of private firms to disclose financial information results from their success in forming a political coalition of members of the Israeli parliament and some of the legal academics who opposed the state officials' suggestion. In addition, non-state winning coalitions, by using the rhetoric of the dominant theoretical perspective, succeeded in convincing the members of the counter-coalition that private firms are private bodies entitled to the right of privacy and as such there is no place for being regulated by the state. Thus, non-state actors succeeded in establishing an understanding among policy makers that there are social arenas that should be protected by the law from the intervention of the state, and they therefore succeeded to exclude most of the corporations from potential state intervention, the result being the constraint of the state's power and its influence on property rights.

To conclude, there is no doubt that fundamental changes are taking place in the relationships between state and economy in many capitalist societies. However, institutional arrangements established in the interventionist period were modified during the regime transformation and exist alongside arrangements of the new regime, the regulatory state. This pattern of both institutional durability and change is discussed in length by the scholars of the 'new institutionalism' school (Clemens and Cook 1999; DiMaggio and Powell 1991). Within the corporate law reform in Israel, the voices of change are situated in the dominant rhetoric of law and economy and in new institutional practices emerging from this ideology, which led to the constraint of state power, whereas the persistent involvement of the state in corporate governance, welfare and behavior results from institutional interests and legacies of state officials. In short, the Israeli corporate law reform is characterized by neo-liberal rhetoric, institutional practices and state institutional practices.

Footnotes

[1] The material includes the work of Professor Procaccia, the Barak Committee report, the protocols of the Knesset sub-committee and letters of state and non-state organization submitted to the Knesset sub-committee and to the Ministry of Justice during the process of forming the law.
[2] See (State of Israel. 1995: 6). .
[3] Protocols of the Knesset sub-committee for the corporate law, 24.12.1995, p. 12.
[4] An epistemic community is a concrete collection of individuals who share the same world view, and in particular hold a common set of principles and causal beliefs, shared notions of validity and a shared policy enterprise.
[5] The philosophy of the new Israeli corporate law, its spirit and many of its legal formulas, were designed by two professors of law from the Hebrew University of Jerusalem: Aharon Barak and Uriel Procaccia. Both have played a crucial role in the design of the law, starting with early phase of the process and up until its final approval by the Knesset.
[6] The key role of the DAGEI team results mainly from its formal position as a state agency that was responsible for leading the process of legislation, starting with the Barak committee in 1985 up until the approval by the Israeli parliament in 1999.
[7] The Banks' Association is a non-profit organization representing the interests of the Israeli banking industry.
[8] The Israeli Bar Association is a professional association that was established through state legalization in order to incorporate advocates and to supervise the standards and ethics of that profession.
[9] APTC is a non-profit organization that represents the interests of Israeli public corporations traded on the Tel Aviv Stock Exchange. In fact, this association mainly represents the interests of the Israeli business groups. According to a study by the Tel Aviv Stock Exchange, out of 652 firms traded in April 1999, 47 percent are owned by business groups, and the market capitalization of these 307 firms is 82 percent of total values of all traded firms (Abramov and Zook 1999)
[10] The MAI represents the interests of the largest manufacturing firms. The majority of firms in Israel are small businesses. However, most of the 1700 firms' members of MAIs are part of Israeli 'big business'.
[11] Protocols of the Knesset sub-committee for the corporate law, 24.12.1995 and 14.1.1996; Letter of Dr. David Tadmor and Oren Bar, Attorneys-At-Law, on behalf of the Manufacturers' Association of Israel, 11.1.1996, page 4-5; Letter of Haim Zadok Co., Advocates, on behalf of the Association of Public Traded Companies, 8.1.1996, page 3.
[12] The dispute on lifting the corporate veil did not end with final approval by the Israeli Knesset in April 1999. Immediately after the law was put into effect in February 2000, different representatives of non-state organizations as well as legal academics called for changes in several articles of the new statute, including the lifting of the corporate veil doctrine. In March 2001, the Ministry of Justice distributed a suggestion to reform the new statute. Basically, the new law memorandum accepts the basic argument of the losing coalition that the doctrine is very broad. Moreover, the new law memorandum restricts the power of the court and specifies a closed and restricted list of causes for piercing the corporate veil (Ministry of Justice: State of Israel. 20.3.2001).
[13] Only with the approval of two-thirds of stockholders which have no personal interests (State of Israel, 1995: 95a and 121c).
[14] The representatives of the Israeli Bar Association, in addition, suggested not only that the chair would not serve as CEO, but that the CEO be prevented from serving as a member of the board. However, their suggestion was rejected.
[15] The dispute on the separation of the position of chair and CEO, similar to the dispute of lifting the veil, did not end with final approval by the Israeli Knesset in April 1999. Immediately after the law was put into effect in February 2000, different representatives of non-state organizations as well as legal academics called for changes. In March 2001, the Ministry of Justice distributed a suggestion to reform the new statute. Basically, the demands of interest groups were accepted. The new law memorandum suggests that the chair of the board could serve as CEO if the percentage of those who oppose it is not more than 1 percent of stockholders (Ministry of Justice: State of Israel. 20.3.2001)..
[16] Protocols of the Knesset sub-committee for the corporate law, 24.12.1995; 7.1.1996; 1.12.1998; 28.12.1998.
[17] The IICPA is a professional association that was established through state legalization in order to incorporate public accountants and to supervise the standards and ethics of the profession.
[18] According to the Annual State Revenue Report for 2000 (no. 50), the number of corporations that paid income tax grows from 34000 in 1990 to 79000 in 1998. The 11% average annual growth to a large extent

results from the decision of self-employed to incorporate themselves for tax reasons, which was the consequence of a state decision in the 1990s that corporate income tax will be 36% while the maximum personal tax is 50%.

[19] There are many articles in the new law that deal with private corporations, however the philosophy of the law and most of the effort of the law refers to public corporations.

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